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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/673,160	12/11/2000	Balin Balinov	NIDN -10369	2196

22840 7590 05/23/2003

AMERSHAM BIOSCIENCES
PATENT DEPARTMENT
800 CENTENNIAL AVENUE
PISCATAWAY, NJ 08855

EXAMINER

HARTLEY, MICHAEL G

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 05/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicant(s)

09/673,160

Applicant(s)

BALINOV ET AL.

Examiner

Michael G. Hartley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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Response to Amendment

The amendment filed 3/31/2003 has been entered. Claims 21 and 22 have been canceled.

Response to Arguments

Any previous rejections that are not reiterated herein have been withdrawn.

Claim Rejections - 35 USC § 102

Claims 1-12 and 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Berg (WO 94/21301), for the reasons set forth in the office action mailed 9/26/2002.

Applicant asserts that Berg fails to disclose gas-containing microparticles (i.e., nucleation sites) in the oil-in-water emulsions, as claimed because Berg teaches the use of solid microparticles in the emulsion.

This is not found persuasive because while Berg does disclose the use of solid microparticles in the gas-forming emulsion droplets, this is only one embodiment of the invention. Berg also teaches that the emulsion droplets may contain gas-bubbles, and therefore are within the scope of those claimed. First, it is noted that the nucleation sites as claimed are not limited to gas-containing microparticles (as set forth in the arguments), but include free gas bubbles, etc., see claim 3. Berg discloses that gas may be incorporated into a preformed emulsion, see page 11, lines 19-24. Such oil-in-water emulsions having gas incorporated therein would encompass gas bubbles associated with the emulsion, as claimed. Further, Berg discloses that microbubble formation may commence before administration and will continue *in vivo*, see page 10. Thus, a portion of the gas-forming material forms a bubble that is associated with the emulsion prior to administration (note the gas-forming material is in the emulsion droplet). Therefore, the emulsion droplet contains a gas-bubble that is associated with the remaining gas-forming material, which is the same as the emulsions containing free gas bubbles in the emulsion droplet, as claimed.

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over a Berg (WO 94/21301) in view of Unger (WO 98/10799), for the reasons set forth in the office action mailed 9/26/2002.

Applicant asserts that Unger fails to correct the deficiencies of Berg stated above, namely, that Berg fails to disclose gas-containing microbubbles (heterogeneous gas-containing nucleation sites) associated with the emulsion droplets.

For the reasons set forth above, Berg does disclose oil-in-water emulsions wherein the emulsion droplets have gas-containing microbubbles associated therewith.

Conclusion

No claims are allowed at this time.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

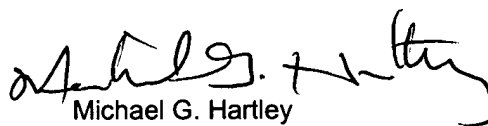
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael G. Hartley whose telephone number is (703) 308-4411. The examiner can normally be reached on M-F, 7:30-5, off alternative Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose G. Dees can be reached on (703) 308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and (703) 308-4556 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

A handwritten signature in black ink, appearing to read "Michael G. Hartley", is written over the printed name.

Michael G. Hartley
Primary Examiner
Art Unit 1616

MH
May 22, 2003